

Seattle Office of Labor Standards

Wage Theft Prevention and Labor Standards Harmonization Ordinance 2015

11/17/15v.12

- Paid Sick and Safe Time PSST
- Job Assistance Ordinance JAO
- Minimum Wage MWO
- Wage Theft WT

Topic	Issue	Description	Type of Revision
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Topics of Concern			
Civil Enforcement	Private right of action	Effective April 1, 2016 for business with 50+ employees	New (PSST, MWO and WT only)
		Effective April 1, 2017 for business with fewer than 50 employees - Count employees (not FTES) in all employer locations, inside and outside Seattle, and count employees in integrated enterprises	
		- Legal & equitable relief without limitation - up to 3x unpaid wages (or compensation) + interest at 12% annum - Attorney fees and costs - Penalties to aggrieved party for retaliation up to \$5000	New (PSST, MWO and WT only)
	Individual & company-wide investigations	Broad enforcement language that permits investigations with or without complaints (i.e. "directed investigations")	Modification - Removed ordinance language re: charge process (but it is still in Chapter 40 rules)
Administrative Remedy for Employees (aggrieved parties)	Unpaid wages (PSST, JAO, MWO)	In settlement, Director has discretion for treble damages.	New
	Unpaid compensation (WT)	In final order 1 st violation – discretionary up to 3x unpaid wages +interest at 12% annum based on mitigating criteria Subsequent violations – automatic 3x unpaid wages + interest at 12% annum - Clock for determining number of violations resets after 10 years - First & subsequent violations are based on Director’s Order per ordinance	

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Administrative Penalty to Agency (City's general fund)	Tiered penalties for 1 st , 2 nd , 3 rd and subsequent violations	In settlement, Director has discretion to impose penalties. In a final order 1 st violation – discretionary up to \$500 per aggrieved party 2 nd violation – mandatory up to \$1000 per aggrieved party 3 rd violation – mandatory up to \$5000 per aggrieved party Subsequent violations – mandatory up to Max \$20,000 per aggrieved party - Clock for determining number of violations resets after 10 years - First and subsequent violations are based on Director's Order per ordinance	New for PSST & JAO - If no aggrieved party in JAO investigation, then penalty goes to City
PSST, JAO, MWO & JAO Definitions	Employer	- Language that supports joint employer liability	Modification

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Enforcement			
Civil Enforcement	Private right of action	Effective April 1, 2016 for business with 50+ employees	New (PSST, MWO and WT only)
		Effective April 1, 2017 for business with fewer than 50 employees - Count employees (not FTES) in all employer locations, inside and outside Seattle, and count employees in integrated enterprises	
		- Legal & equitable relief without limitation - up to 3x unpaid wages (or compensation) + interest at 12% annum - Attorney fees and costs - Penalties to aggrieved party for retaliation up to \$5000	New (PSST, MWO and WT only)
	Individual & company-wide investigations	Broad enforcement language that permits investigations with or without complaints (i.e. “directed investigations”)	Modification - Removed ordinance language re: charge process (but it is still in Chapter 40 rules)
Statute of Limitations	3 years	Agency’s investigations have greater scope	Modification for PSST, JAO - Increased from 180 days
Provisions to encourage reporting of violations	Confidentiality	To the extent permitted by law, the identity of complainant and witnesses is protected during and after the Agency’s investigation	New for PSST, JAO, MWO
	U-Visa	Employee who reports certain wage theft violations can apply for <u>nonimmigrant status visa</u> for self & family members. Director can certify the visa application.	New for PSST, JAO, MWO

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	Notice of Investigation	Employers must post workplace notice of open investigation that encourages further reporting of violations. Posting in conspicuous and accessible place for employees at workplace or job site is required. If no regular workplace or job site, then employer may provide poster on individual basis in physical or electronic format.	New
Retaliation Protections	“Any person”	Retaliations provisions apply to “any person” - No employer or any other person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter... - No employer or any other person shall take any adverse action against any person because the person has exercised in good faith the rights protected under this Chapter...	Modification
	Increased Protection	- Protections from retaliatory adverse action “against any person” that may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment	Modification
	Rebuttable presumption	Rebuttable presumption of retaliation for adverse action within 90 days of protected activity, rebuttable by employer with clear and convincing evidence	New for PSST, JAO, MWO; Modification for WT to include “clear and convincing language”
	Mixed motive analysis	Adverse action is retaliatory if protected activity is motivating factor	New - Standard for analysis is “motivating factor” rather than “substantial factor”

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Conducting Investigations	Equitable tolling for statute of limitations	Tolling for civil action, final order of hearing examiner, writ of review (“after all appeals have been exhausted after final order”) begins when person files complaint or Agency opens investigation	New for PSST, JAO, MWO
	Misclassification burden	- Burden for determining contractor vs. employee status is on employer rather than worker	New - Ordinance will not identify test for misclassification; rules will identify test
	Employer records	-Added 3 years records retention requirement for each employee -Deleted records inspection requirement -Added new subpoena process in the “investigation section” for obtaining employer records (includes issuance of subpoena by Hearing Examiner). -Added subpoena power for City Auditor’s review of employer records (includes issuance of subpoena by Hearing Examiner)	Modification for PSST, MWO, WT
	Subpoena Process	- Director may apply to Hearing Examiner for subpoenas. - Hearing Examiner will issue subpoenas upon a showing that there is reason to believe that a violation has occurred if a complaint has been filed with the Agency, or that circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of workers who are vulnerable to violations or workforce is unlikely to volunteer information regarding such violations.	New for PSST, JAO, MWO, WT

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		- An employer that fails to comply with subpoena may not use such records in any appeal	
	Deposit of funds or bond	Where the Director has reason to believe that a violation has occurred, the Director may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing, including but not limited to a deposit of funds or bond sufficient to satisfy a good-faith estimate of wages, interest, damages, and penalties due. A respondent may appeal any such order.	New
Closing Investigations	Director's Order	Includes notice of violation(s), remedies due, ability for respondent to mitigate civil penalties & fines (if applicable), corrective action (e.g. monitored compliance), and rights to appeal.	New
Employee Appeal	Internal Appeal	- Removed Seattle Human Rights Commission from appeals - Director will issue rules with appeal process for all labor standards ordinances (OLS will research best practices across country and gather stakeholder input for employee appeals that provides more parity with employer appeals to hearing examiner)	Modification for PSST, JAO
Employer Appeal	Hearing examiner	15 days to appeal Director's Order	New for PSST, JAO
Human Rights Commission	Guidance, Employee Appeals, Hearing Examiner Panel	- Removed reference to Human Rights Commission for PSST & JAO (HRC will not hear appeals and sit on Hearing Examiner Panel) - Director rules will establish appeals process	New for PSST, JAO - Labor Standards Advisory Commission will provide input on Labor Standards implementation

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Collections	Period for compliance	30 days to comply for settlement, Director’s Order, hearing examiner order, & court judgment	New
	Director’s Order	Agency may require posting notice of failure to comply in a form and manner determined by the Agency.	New
	Collections	Agency may refer matter to collections agency	New
	Court enforcement	Agency may refer matter to City Attorney to file civil action in court of competent jurisdiction.	New for PSST, JAO
	Liens & Garnishing	Upon court judgment, City Attorney can file lien for real & personal property and garnish wages	New
	Business License Revocation	Director may request Finance and Administrative Services to refuse to issue, renew or revoke business license	New for PSST, JAO, MWO
	Successor Liability	Within 10 days of transfer of a major part of property, any person who becomes successor to the business shall become liable for full amount of final order if successor had actual knowledge or access to prompt, reasonable means of getting the information about the unpaid order.	New for PSST, JAO, MWO

Remedies			
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Scope	Failure to comply with any requirement of ordinance is violation	Noncompliance is not limited to just failing to pay wages	New for PSST, JAO, MWO
	Remedies are cumulative	Payment of unpaid wages, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided in each ordinance are cumulative and are not intended to be exclusive of any other available remedies, penalties, fines, and procedures.	New
	Penalties increase with rate of inflation on annual basis	CPI-W based on metropolitan Seattle-Tacoma-Bremerton Area. OLS shall determine the increased amounts and file a schedule of such amounts with City Clerk.	New

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	Director’s criteria for determining penalties & mitigation of penalties	Director shall consider: 1. Total remedy amount of remedy to each aggrieved party 2. Nature & persistence of violations 3. Extent of respondent’s culpability 4. Substantive or technical nature of the violations 5. Circumstances of each case 6. Amount of penalties in similar cases 7. size, revenue and HR capacity of respondent 8. other factors pursuant to rules	New - For #1-#6, See <i>Beliz v. W.H. McLeod & Sons Packing Co.</i> , 765 F.2d 1317, 1332 (5th Cir.1985)
Administrative Remedy for Employees (aggrieved parties)	Unpaid wages (PSST, JAO, MWO) Unpaid compensation (WT)	In settlement, Director has discretion for treble damages. In final order 1st violation – discretionary up to 3x unpaid wages + interest at 12% annum based on mitigating criteria Subsequent violations – automatic 3x unpaid wages + interest at 12% annum - Clock for determining number of violations resets after 10 years - First & subsequent violations are based on Director’s Order per ordinance	New
	Penalty to aggrieved party for JAO	In settlement, Director has discretion. In final order, Director must assess some level of penalty, but has the discretion to decide an amount that is “up to” the cited figure. 1 st violation – up to \$500 per aggrieved party 2 nd violation – up to \$1000 per aggrieved party	Modification for JAO only - First violation results in penalty; penalty goes to job applicant or employee, or Agency if there is no identified aggrieved party

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		3 rd violation – up to \$5000 per aggrieved party	
	Penalty to aggrieved party for Retaliation	<p>In settlement, Director has discretion to assess legal and equitable relief.</p> <p>In final order, Director will award</p> <ul style="list-style-type: none"> - any appropriate relief at law or equity including but not limited to reinstatement and up to 3x front pay in lieu of reinstatement - penalty to the aggrieved party up to \$5000 	New for JAO, MWO, WT
Penalty to Agency (City's general fund)	Tiered penalties for 1 st , 2 nd , 3 rd and subsequent violations	<p>In settlement, Director has discretion to impose penalties.</p> <p>In a final order</p> <p>1st violation – discretionary up to \$500 per aggrieved party</p> <p>2nd violation – \$1000 per aggrieved party</p> <p>3rd violation – mandatory up to \$5000 per aggrieved party</p> <p>Subsequent violations – mandatory up to Max \$20,000 per aggrieved party</p> <ul style="list-style-type: none"> - Clock for number of violations resets after 10 years from first violation. - First and subsequent violations are based on Director's Order per ordinance 	New for PSST & JAO (if no aggrieved party in JAO investigation, then penalty goes to City)
	Fines	Chart of fines for specific violations in each ordinance	New

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Topic	Issue	Description	Type of Revision
		<ul style="list-style-type: none"> - \$500 (notice of rights/poster) - \$500 (PSST notification every pay period) - \$500 (PSST written policy) - \$500 per missing record (employer records) - \$1000 per aggrieved party (retaliation) - \$500 (notice of investigation) - \$500 (notice of failure to comply with final order) 	
	Willful failure to comply with notice & posting requirements	1 st violation, \$750 penalty 2 nd violation, \$1000 penalty	Modification (1 st violation increased from \$125 2 nd violation increased from \$250)
	Willful interference with Director or Hearing Examiner	\$1000 to \$5000 (max) penalty	New
	Mitigation of Penalties and Fines	<p>Pursuant to rules, if there is a remedy due to an aggrieved party, the Director has discretion to mitigate the amount of penalties and citations due to the Agency.</p> <ul style="list-style-type: none"> - pay within 10 days = penalties waived - pay within 15 days = penalties halved - pay after 15 days = penalties remain <p>*Mitigation does not apply to penalties payable to aggrieved party (i.e. JAO and retaliation)</p>	New
Limits on City Contracts	City Contracts	- An employer that is the subject of a final order for which all appeal rights have been exhausted shall not be permitted to bid, or have a bid considered, on any City contract	New

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		until such amounts due under the final order have been paid in full to the Director. If an employer is the subject of a final order two times or more within a five-year period, the contractor or subcontractor shall not be allowed to bid on any City contract for two years. - This subsection is separate from, and in addition to, debarment provisions in Chapter 20.70.	
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Definitions

Common Definitions	Employ	- Means to suffer or permit to work.	New for PSST and JAO; Modification for MWO and WT
	Employer	- Any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee - More than one entity may be the “employer” if employment by one employer is not completely disassociated from employment by the other employer	Modification (Changed to match MWO & WT) - Language that identifies joint employer liability
	Employee	- Any individual employed by an employer, and includes but is not limited to full-time employees, part-time employees, and temporary workers. - An employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself rather than dependent upon the alleged employer.	Modification
	Front Pay	Compensation employee would earn or would have earned if reinstated to employee’s former position.	New
	Rate of Inflation	CPI-W for metropolitan Seattle-Tacoma-Bremerton Area	New for PSST & JAO; modification for

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			MWO, WT -Clarification that using metro rather than nat'l index
	Successor	Any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer's business, a major part of the property, whether real or personal, tangible or intangible, of the employer's business.	New for PSST, JAO and MWO; modified for WT
	Wage	Compensation due to an employee by reason of employment payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the Director.	New for PSST and JAO - No change to MWO - Definition removed from WT (because there is a new definition for "compensation")

Ordinances

PSST

Short title	Paid Sick and Safe Time Ordinance	Formal short title	New
Definitions	Benefit year	- 12 fixed consecutive months (i.e. January 1 to December 31, tax year, fiscal year, or contract year; or year running from an employee's one-year anniversary date of employment) - Employer must provide notice of employer's choice of benefit year in PSST policy (see notice & posting) - When employer changes benefit year, there must be no loss of accrual, use & carry over of PSST	Modification (City Auditor recommendation) - Changed name from "calendar year" to "benefit year"
Employment in Seattle	Occasional Basis employees	- Clarification that employee who is typically based outside of the City and performs work in the City on an occasional basis is covered only if the employee performs more than	Modification

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		240 hours of work in the City within a benefit year. - Once an employee who works in the City on an occasional basis performs more than 240 hours of work in the City within a benefit year, all previous hours worked in the City during that benefit year count toward the accrual of PSST and the employee remains covered by the ordinance for the duration of employment with the employer	
Determining Employer Tier	Worked for compensation	-Employer tier for current calendar year is based upon average number of full-time equivalents <u>who worked for compensation</u> per calendar week during the preceding calendar year -Number of FTEs for determination of Tier 1-2-3 size remains the same	Modification - Replaced “paid” with “worked for compensation” to harmonize language in PSST and MWO
	Integrated enterprise	-Separate entities in an integrated enterprise shall be an single employer	Modification -Codified an existing rule re: integrated enterprise
Accrual	Successor Employer	When an employer quits, sells out, exchanges, or disposes the employer’s business, or the employer’s business is otherwise acquired by a successor, an employee shall retain all accrued paid sick and safe time and may use such paid leave for work scheduled within the geographic boundaries of the City for the successor employer.	Modification - Clarification of existing requirement
Use	Breaks in Service	Total time of employment used to determine eligibility must occur within three calendar years	Modification - Changed from 2 to 3 years to harmonize 3 year SOL & record keeping requirement
	Hour Increments	Paid sick and safe time hours shall be used in the smaller of hourly increments or, if feasible by the employer’s payroll system, increments that round to the	Modification - Changed from use in hour increments to quarter hour

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		nearest quarter of an hour. When using quarter-hour increments, employers shall use employee’s available paid sick and paid safe time to round up or down to the nearest quarter hour if necessary to prevent an employer’s absence control policy from counting paid sick or safe time covered under this Chapter 14.16 as an absence that may lead to or result in any adverse action taken against the employee.	increments with additional protections against absence control policies
Notice & Posting	Workplace poster	Posting in conspicuous and accessible place at job site is required. If no regular job site, then employer may provide poster on individual basis in physical or electronic format.	Modification
	Language requirements for Notice (e.g. poster)	- Employer must display poster in English and primary language spoken by employee(s) - Agency will create translated versions of poster	Modification
	Written Policy	Effective April 1, 2016, Employer must provide individual notice of written PSST policy with employer’s calendar year and policy/procedure for meeting PSST requirements, English only	New (City Auditor recommendation)
Enforcement	Special procedures for “Reasonable Cause” cases against City Departments	Removed because these provisions do not exist for MWO and WT (holdover from civil rights laws)	Modification
Other Legal Requirements	Prevailing Wage	PSST applies to employees entitled to state and federal prevailing wage	Modification - Clarification of existing requirement

JAO			
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Short title	Fair Chance Employment Ordinance	Formal short title that replaces informal short title, “Job Assistance Ordinance”	New
Notice and Posting	Workplace Poster	Effective April 1, 2016, Posting in	New

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		conspicuous and accessible place at job site is required. If no regular job site, then employer may provide poster on individual basis in physical or electronic format.	
	Language requirements for Notice (e.g. poster)	- Employer must display poster in English and primary language spoken by employee(s) - Agency will create translated versions of poster	New
MWO			
Short title	Minimum Wage Ordinance	Formal short title	New
Employer Schedule Size	Counting employees	Schedule size is based on number of employees worldwide. Deleted "in the United States"	Modification - Changed to match PSST
Notice & Posting	Workplace Poster	- Annual update with current rate of minimum wage - Posting in conspicuous and accessible place at job site is required. If no regular job site, then employer may provide poster on individual basis in physical or electronic format.	Modification
	Language requirements for Notice (e.g. poster)	- Employer must display poster in English and primary language spoken by employee(s) - Agency will create translated versions of poster	Modification
WT			
Short title	Wage Theft Ordinance	Formal short title that replaces informal short title, "Administrative Wage Theft Ordinance"	New
Definitions	Compensation	Compensation includes but is not limited to salaries, wages, tips, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively-required paid leave, and reimbursement for employer expenses.	New - Expanded definition to include more than wages and tips

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Compensation Requirements	Requirement	An employer shall pay all compensation owed to an employee by reason of employment on an established regular pay day at no longer than monthly payment intervals.	Modification - Modified requirement to align with expanded definition of "compensation"
Notice & Posting	Workplace Poster	Posting in conspicuous and accessible place at job site is required. If no job site, then employer may provide poster on individual basis in physical or electronic format.	New
	Language requirements for Notice (e.g. poster)	- Employer must display poster in English and primary language spoken by employee(s) - Agency will create translated versions of poster	Modification
	Notice of Employment Information	- Effective April 1, 2016, employers must provide notice of employment information for existing employees - Employers must provide notice of changes to such employment information (e.g. pay increase) before such change or as soon as practicable for retroactive changes, pursuant to rules issued by the Director. - Eligibility for overtime added to notice of employment information	Modification Changed language about notification of "overtime rate" to "overtime eligibility"
Records	Record Keeping	Record keeping expanded to mirror records requirements for State Industrial Welfare Act and Minimum Wage Act (as described in L & I admin policy based on state law and WACs)	Modification Mirrored language from state law re: OT and other records requirements